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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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03/11/2004

Matilde Bustos De Abajo

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03/17/2009

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26 WEST 61ST STREET
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EXAMINER

WEHBE, ANNE MARIE SABRINA

ART UNIT

PAPER NUMBER

1633

MAIL DATE

DELIVERY MODE

03/17/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Response to Amendment

Applicant's amendment and response filed on 12/30/08 has not been entered. The applicant received a Non-Final office action, mailed on 5/29/08, in response to their RCE submission of 3/7/08. On 12/1/08, the applicant filed a Notice of Appeal to the Board from the decision of the Primary Examiner, mailed 5/29/08, rejecting claims 12-18 and 28-33 for at least the second time. However, following a Notice of Appeal, entry of amendments is governed by 37 CFR 41.33 which states:

- (a) Amendments filed after the date of filing an appeal pursuant to § 41.31(a)(1) through (a)(3) and prior to the date a brief is filed pursuant to § 41.37 may be admitted as provided in § 1.116 of this title.
- (b) Amendments filed on or after the date of filing a brief pursuant to § 41.37 may be admitted:
 - (1) To cancel claims, where such cancellation does not affect the scope of any other pending claim in the proceeding, or
 - (2) To rewrite dependent claims into independent form.
- (c) All other amendments filed after the date of filing an appeal pursuant to § 41.31(a)(1) through (a)(3) will not be admitted except as permitted by §§ 41.39(b)(1), 41.50(a)(2)(i), 41.50(b)(1) and 41.50(c).

The amendment filed on 12/30/08 does not qualify under 41.33(a) as the amendment was not an amendment under 1.116 filed in response to a Final office action. Further, the amendment was not filed on or after the filing of an appeal brief, or pursuant to 41.39, or 41.50. As such, according to 37 CFR 41.33(c), the amendment filed 12/30/08 will not be admitted.

There is no new time period set for a response to this notice as the time period for response set with the filing of the Notice of Appeal is still in effect. As set forth in 37 CFR

Art Unit: 1633

41.37(a), the appellant must file a brief under this section within **two** months from the date of filing the notice of appeal under 37 CFR 41.31, accompanied by the fee set forth in 37 CFR 41.20(b)(2). The time period for response is extendable under the provisions of 37 CFR 1.136 for patent applications.

Any inquiry concerning this communication from the examiner should be directed to Anne Marie S. Wehbé, Ph.D., whose telephone number is (571) 272-0737. If the examiner is not available, the examiner's supervisor, Joseph Woitach, can be reached at (571) 272-0739. For all official communications, **the new technology center fax number is (571) 273-8300**. Please note that all official communications and responses sent by fax must be directed to the technology center fax number. For informal, non-official communications only, the examiner's direct fax number is (571) 273-0737. For any inquiry of a general nature, please call (571) 272-0547.

The applicant can also consult the USPTO's Patent Application Information Retrieval system (PAIR) on the internet for patent application status and history information, and for electronic images of applications. For questions or problems related to PAIR, please call the USPTO Patent Electronic Business Center (Patent EBC) toll free at 1-866-217-9197.

Representatives are available daily from 6am to midnight (EST). When calling please have your application serial number or patent number available. For all other customer support, please call the USPTO call center (UCC) at 1-800-786-9199.

Dr. A.M.S. Wehbé

/Anne Marie S. Wehbé/

Primary Examiner, A.U. 1633